

Editor's note; Affirmed Beaird . Andrus, Civ. No. F-77-31 (D. Alaska June 19,1974).

UNITED STATES
v.
CHARLES THOMAS BEAIRD

IBLA 77-16 Decided July 6, 1977

Appeal by the United States from a decision of Administrative Law Judge E. Kendall Clarke, dismissing a contest complaint involving headquarters site application F-034803.

Reversed.

1. Alaska: Headquarters Sites

A headquarters site applicant has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1970). Where such an applicant asserts that he operates a trapping business from the site, yet fails to produce sufficient evidence to show that he was engaged in trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

APPEARANCES: James R. Mothershead, Esq., Office of the Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for appellant; Richard R. Cole, Esq., Fairbanks, Alaska, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The United States has appealed from a decision of Administrative Law Judge E. Kendall Clarke, dated September 20, 1976, which dismissed a contest complaint filed on December 31, 1974, seeking the invalidation of headquarters site application F-034803. The complaint charged that the contestee had failed to develop the headquarters site in connection with a trade, business, or other

productive industry, and that he had filed on land containing an airstrip made by or in possession of, another person, association or corporation.

With respect to the first charge in the complaint, that the contestee failed to develop the site in connection with a productive industry, appellant maintains that the administrative law judge erred in finding that Mr. Beaird's activity was sufficient to be considered a productive industry within the meaning of the headquarters site law, 43 U.S.C. § 687a (1970).

The Act of March 3, 1927, as amended, 43 U.S.C. § 687a (1970) provides that:

[A]ny citizen of the United States twenty-one years of age who is himself engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands, * * * in Alaska as a homestead or headquarters, under rules and regulations to be prescribed by the Secretary of the Interior, * * *.

Appellee filed a notice of location for a headquarters site on September 29, 1965. In the application he indicated that trapping was "the kind of trade, manufacturing, or other industry for which the claim is maintained or desired." On April 29, 1970, appellee filed an application to purchase the headquarters site indicating that he had established a trapping business using the site as headquarters for the operation.

Departmental regulation 43 CFR 2563.1-1(a) requires that the application to purchase show, inter alia,

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

* * * * *

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an associate of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose as a homestead or headquarters.

Appellee testified that he started building a log and A-frame cabin on the site in 1965 and finished it in 1966 (Tr. 81). The

cabin is 12 feet by 14 feet, inside measurements (Tr. 83). He stated that the purpose of the cabin was for trapping, hunting and fishing (Tr. 83). Appellee also completed another cabin on the site in 1974 (Tr. 86). The second cabin was intended to be appellee's summer home when he retired in August 1974 (Tr. 87). During the life of appellee's claim (1965-1970), he was employed on a full-time basis, i.e., 5 days a week, at Eielson Air Force Base, near Fairbanks (Tr. 109).

When questioned as to his purpose for filing for this particular headquarters site, appellee responded, "Because I wanted to do trapping and hunting and fishing" (Tr. 89).

Following completion of the cabin in 1966, appellee began trapping in the winter of 1966-67 (Tr. 91). Appellee described his trapping experience, as follows:

A. Stayed in the cabin, and I had – first had to make trails up and down the river, both above and below the cabin, and established my trap lines and put out my traps. And then I went back – tried to go back once a week, but once in a while you'd have weather that would stop you. That wasn't very often.

Q. What do you mean weather? What would stop you?

A. Well, if it was colder than 20 below, then I wouldn't go.

Q. You went up there – at that time it was 20 below?

A. Yes.

Q. And when would you go and when would you come back?

A. I would go on Friday and then come back on Sunday.

Q. How did you keep – You kept the airplane warm, or –

A. Yes, I took the oil out and heated it when I went to put it back. And then I had a catalytic heater to keep the engine warm.

Q. Now, how long was your trap line, and how many traps did you have?

A. I had approximately a hundred traps, and I went a mile below the cabin and a mile above the cabin.

Q. Had you had any experience in trapping before?

A. No, sir. I had my only experience then.

Q. Pardon me?

A. That was my first and only experience.

Q. Did you have anybody go with you and help you out?

A. My wife went most of the time, and Steve Osinik (phonetic) went with me a few times.

Tr. 91-92.

Appellant stated that while trapping he caught:

two wolves and I collected the bounty on that, of course. At that time -- before it was taken off and then sold the hides. And then I got one wolverine, and that -- at the time that I filed -- or in 1970, I had 26 marten, I think it was, and two beaver. But since then I've caught quite a few others.

Tr. 93.

Appellee had no evidence, such as receipts showing sale of the wolf hides (Tr. 102). Appellee did not remember the year he trapped the wolverine, although it was during the qualifying period (Tr. 102). He testified that he had the head of the wolverine mounted and that he sold the hide. He had no receipt for such sale (Tr. 102). Appellee stated that he had the two beaver skins and the 26 marten tanned. He thought he still had the beaver skins. He testified that the marten were in storage in Portland, Oregon, to be made into a coat for his wife (Tr. 103).

Appellee testified that he had taken people to the area of the headquarters site for hunting and fishing purposes (Tr. 95). He stated that "in the summers of each year and the falls I've taken hunters and fishermen up there" (Tr. 95). He stated that he received compensation for such trips in the form of carpentry and masonry work on houses he was building to be sold (Tr. 95). Appellee submitted no evidence indicating the number or frequency of such trips.

In the summer of 1967 appellee spent weekends at the cabin, fishing and making improvements (Tr. 97). In the winter of 1967-68, appellee trapped at the site (Tr. 97). Appellee testified that he made 3 trips a month to the site in the winter and 2 or 3 trips a month to the site in the summer (Tr. 98).

Appellee had a hunting, fishing and trapping license for each of the years 1965-70 (Tr. 105-06). However, he did not have an Alaska State Business License for any of those years. He stated, "I didn't know that I needed one" (Tr. 106).

Steve Wuksinich, who testified on behalf of appellee, stated that in 1967 or 1968 he walked the trapline with appellee and he witnessed appellee take a wolverine and a marten or two from the traps (Tr. 127).

Appellee also submitted a registered guide license for 1970. He stated that such license was used in connection with a guiding service which he conducted from a trade and manufacturing site which he had filed for in 1968 on Jarvis Creek (Tr. 107). The statutory life of the trade and manufacturing site claim expired in 1973 without application to purchase being filed (Tr. 54; 108).

In response to a notice by BLM requesting appellee to show cause why his application to purchase the headquarters site should not be rejected, appellee submitted a number of documents to BLM on September 1, 1970. On one page under the heading "Other Activities," the following appeared:

That in addition to the trapping, which proved profitless, I have been for the past five years a big game guide with my headquarters on my trade and manufacturing site, where I had shelter and the air strip from which I could take out my hunting parties. The greater part of my income was from these hunts.

[1] Appellant contends that the Judge erred in finding that appellee's activity on the headquarters site during the qualifying period was sufficient to be considered a productive industry within the meaning of the headquarters site law and regulations. We agree.

During the qualifying life of the site, the only quantified expression of revenue from the trapping operation was the \$100 wolf bounty. Appellee stated that he sold the wolf and wolverine hides, but he never attached a dollar value to such sales. The two beaver skins were never sold, and the marten are being retained for his personal use. There is no other evidence of animals being trapped during the 5-year period.

Appellee also testified concerning the receipt of labor in return for his guide services. However, he has produced no corroborating evidence concerning the frequency of this exchange, no names of whom he dealt with, or what the dollar value of the service was. In addition, the application to purchase the headquarters site mentioned only a trapping business being conducted from the site, not a guide service. Appellee's guide service was apparently conducted from his trade and manufacturing site, as evidenced by appellee's statement submitted to BLM on September 1, 1970.

The burden of establishing entitlement to the land claimed as a headquarters site rests with the applicant and he must show compliance with the statute and regulations. Vernon L. Nash, 17 IBLA 332 (1974). Although the law does not require that an applicant show that the trade, manufacture or other productive industry was profitable, there must be evidence from which it can be concluded that the applicant was engaged in an actual business operation from which he reasonably hoped to derive a profit. See United States v. Tibbetts, 29 IBLA 348 (1977); United States v. Crow, 28 IBLA 345 (1977).

The reasoning in a trade and manufacturing site case, James E. Allen, A-30085 (February 23, 1965), is apposite to the case at bar. In Allen, the Solicitor stated:

We do not mean to imply that a modest operation or even an unprofitable one would necessarily fail to qualify under the trade and manufacturing site law. That law does not require the existence of a full-blown enterprise before a patent can issue. We do not believe, however, that the law can be interpreted to encompass an operation so infrequently used by customers and so unproductive of gross receipts as the business operated by the appellant here during the life of his claim.

The fact that Allen has expended some \$2,200 in improvements on the tract does not in itself establish that his venture was commercial. Much of the improvements – construction of the airstrips, etc. – would have been essential for purely personal use of the field. He has made no showing as to how much of his investment was made as a business proposition to be recovered from returns from his operations. This is not to say that he was required to make such a showing but a showing of a reasonable investment from which a reasonable return could be expected would have been evidence in support of the

contention that he had established a business operation.

Herein, appellee has failed to assume his burden of proof by providing sufficient evidence to support his contentions. It is clear that to establish a right to land under the public land laws, an applicant is required to support his assertions with evidence which is within his sole control. United States v. Block, 12 IBLA 393, 80 I.D. 571 (1973).

We do not believe that the headquarters site law can be interpreted so broadly as to encompass a trapping operation with gross receipts during the life of the claim of such a meager nature. See United States v. Crow, *supra*; James E. Allen, *supra*. The inference must be that appellee was engaged in the operation only for his personal pleasure and was not engaged in trade, manufacture, or other productive industry from which he hoped to garner a profit.

Appellant has also charged that the Judge erred in finding that the airstrip on the site was no longer an improvement within the meaning of 43 CFR 2563.1-1(a)(6), when appellee located his headquarters site in 1965. We need not discuss this issue in light of our holding above that appellee's activity on the site was not sufficient to meet the requirements of the headquarters site law. Such a holding necessitates the rejection of appellee's application to purchase.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge E. Kendall Clarke is reversed.

Frederick Fishman
Administrative Judge

We concur.

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

